

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CORRECTED SUMMARY ORDER¹

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of July, two thousand seven.

PRESENT:

HON. CHESTER J. STRAUB,
HON. ROBERT D. SACK,
HON. ROBERT A. KATZMANN,
Circuit Judges.

HUA GUO, YING GUO,
Petitioners,

v.

ALBERTO GONZALES,
Respondent.

05-1577-ag (L) ;
05-1579-ag (Con)
NAC

¹This order supercedes the order issued on July 17, 2007.

1 **FOR PETITIONERS: Robert J. Adinolfi, Louis & Adinolfi, New**
2 **York, New York.**

3
4 **FOR RESPONDENT: Because the Court did not receive a brief**
5 **from the respondent within fifteen days**
6 **of the April 6, 2007 due date specified**
7 **in the scheduling order issued on March**
8 **22, 2007, this case has been decided**
9 **without the benefit of respondent's**
10 **brief. See Local Rule § 0.29(d).**

1 UPON DUE CONSIDERATION of these petitions for review of
2 a Board of Immigration Appeals ("BIA") decision, it is
3 hereby ORDERED, ADJUDGED, AND DECREED that Ying Guo's
4 petition for review is DISMISSED with prejudice as having
5 been withdrawn, and Hua Guo's petition for review is
6 DISMISSED in part, DENIED in part, GRANTED in part, and
7 REMANDED for further proceedings consistent with this
8 opinion.

9 Petitioners Ying Guo and Hua Guo, citizens of the
10 People's Republic of China, seek review of a March 14, 2005
11 order of the BIA affirming the November 17, 2003 decision of
12 Immigration Judge ("IJ") Paul A. Defonzo, denying their
13 applications for asylum, withholding of removal, and relief
14 under the Convention Against Torture ("CAT"). *In re Hua*
15 *Guo, Ying Guo*, Nos. A73 626 706, A73 626 707 (B.I.A. Mar.
16 14, 2005), *aff'g* Nos. A73 626 706, A73 626 707 (Immig. Ct.
17 N.Y. City Nov. 17, 2003). We assume the parties'
18 familiarity with the underlying facts and procedural history
19 of the case.

1 On July 10, 2007, we received a stipulation signed by
2 both parties in *Ying Guo v. Gonzales*, No. 05-1579-ag(CON)
3 agreeing to withdraw Ying Guo's petition for review with
4 prejudice. Accordingly, and pursuant to Fed. R. App. P.
5 42(b), Ying Guo's petition for review is dismissed with
6 prejudice.

7 With regard to Hua Guo, where, as here, the BIA issues
8 an opinion that fully adopts the IJ's decision, we review
9 the IJ's decision. See, e.g., *Chun Gao v. Gonzales*, 424
10 F.3d 122, 124 (2d Cir. 2005). We review *de novo* questions
11 of law and the application of law to undisputed fact, see,
12 e.g., *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir.
13 2003), and review the agency's factual findings under the
14 substantial evidence standard, treating them as "conclusive
15 unless any reasonable adjudicator would be compelled to
16 conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *Zhou*
17 *Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). The
18 Court generally will not disturb adverse credibility
19 determinations that are based on "specific examples in the
20 record of inconsistent statements . . . about matters
21 material to [an applicant's] claim of persecution, or on
22 contradictory evidence or inherently improbable testimony
23 regarding such matters." *Zhou Yun Zhang*, 386 F.3d at 74
24 (internal quotation marks omitted).

1 As an initial matter, petitioner's ineffective
2 assistance of counsel claim against Karen Jaffe is not
3 properly before this Court because he did not exhaust this
4 issue before the BIA. See *Karaj v. Gonzales*, 462 F.3d 113,
5 119 (2d Cir. 2006); *Lin Zhong v. U.S. Dep't of Justice*, 480
6 F.3d 104, 119-20 (2d Cir. 2007), *reh'g en banc denied*, ---
7 F.3d ---, No. 02-4882-ag, 2007 WL 1574755 (2d Cir. May 31,
8 2007). Accordingly, we dismiss this claim.

9 Substantial evidence supports the IJ's finding that Hua
10 Guo failed to provide sufficient credible evidence to
11 establish that his fear of mistreatment was on account of a
12 protected ground. Neither Hua nor Ying Guo, nor their
13 mother, Huang Guo, testified that their home was targeted
14 for demolition because Huang Guo had violated the family
15 planning policy. Rather, they each stated that the
16 government informed them that "road, 104, got to go through
17 there, your house got to be torn down." Although Hua Guo
18 and Huang Guo did testify that they believed the government
19 had refused to compensate them for the destruction of their
20 home because Huang had violated the family planning policy,
21 they each additionally made statements to the contrary.
22 First, Huang stated at her airport interview that her home

1 was destroyed because she is Christian.² In addition, both
2 Hua and Ying Guo testified that government officials told
3 them that they would not be compensated for the destruction
4 of their home because they had refused to vacate it in a
5 timely manner. Thus, the IJ's determination that Hua Guo
6 did not demonstrate a nexus between his fear of mistreatment
7 and a protected ground is supported by substantial evidence
8 in the record, and, therefore, the IJ appropriately denied
9 his applications for asylum or withholding of removal. See
10 *Melgar de Torres v. Reno*, 191 F.3d 307, 313 (2d Cir. 1999).
11 Accordingly, that aspect of Guo's petition is denied.

12 We also note that Hua Guo does not challenge the
13 agency's denial of his application for CAT relief, and deem
14 any such claim waived. *Yueqing Zhang*, 426 F.3d at 541 n.1,
15 545 n.7. Accordingly, that aspect of Guo's petition is
16 dismissed.

17 However, the BIA did not address Hua Guo's argument
18 that he is eligible for asylum under the Child Status
19 Protection Act ("CSPA"), 8 U.S.C. § 1158(b)(3), nor did it
20 find that he had waived this argument. Indeed, Hua Guo

²Although Huang denied having made this statement at her merits hearing, she did not challenge the accuracy of the airport interview transcript before the BIA, and therefore failed to exhaust that issue. *Lin Zhong*, 480 F.3d at 119-20. Neither does she meaningfully challenge the reliability of the document before this Court, stating only: "[a]ddressing the issue of the airport interview, such interviews are suspect." Petitioner's Brief at 15. Accordingly, we also deem the issue waived. See *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005).

1 appears to be eligible under the CSPA, considering: (1) he
2 is unmarried, (2) his mother filed her application when he
3 was under 21 years old, (3) his mother's application was
4 still pending when he turned 21 years old, and (4) his
5 mother's grant of asylum occurred after the CSPA was in
6 effect. The BIA's failure to consider whether Hua Guo is
7 eligible under the CSPA is in direct conflict with the BIA's
8 published decision in *In re Rodolfo Avila-Perez*, 24 I. & N.
9 Dec. 78, 85 (B.I.A. 2007), which held that an appeal will be
10 sustained where the respondent "appears to be statutorily
11 eligible" under the CSPA.

12 Accordingly, Ying Guo's petition for review is
13 DISMISSED. Hua Guo's petition for review is DISMISSED in
14 part, DENIED in part, GRANTED in part, and REMANDED for
15 further proceedings consistent with this opinion. Having
16 completed our review, petitioners' pending motion for a stay
17 of removal in this petition is DENIED as moot.

18
19 FOR THE COURT:
20 Catherine O'Hagan Wolfe,
21 Court Clerk
22
23

By: _____